

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, x S5 02 Cr. 1237 (SWK)  
x  
x  
x  
-against- x **OPINION & ORDER**  
x  
x  
ANGELO DIPIETRO ET. AL., x  
x  
Defendant. x  
-----X  
**SHIRLEY WOHL KRAM, U.S.D.J.**

Today, several of the defendants ask the Court to issue certain limiting instructions with respect to Government Exhibits 100-186 and the corresponding transcripts, Government Exhibits 100T-186T. All of the requests, including the one based on United States v. Gigante, 166 F.3d 75 (2d Cir. 1999), go to the question of admissibility of the exhibits and, therefore, are untimely. On May 10, 2005, see May 10, 2005 Tr. at 724, 726, the defendants stipulated to the admissibility of the exhibits in their entirety and without limitation.<sup>1</sup> Pursuant to that stipulation, the Court received Government Exhibits 100-186 and 100T-186T into evidence. The Court will not now re-litigate the issue of admissibility cloaked in the guise of requests for limiting instructions.

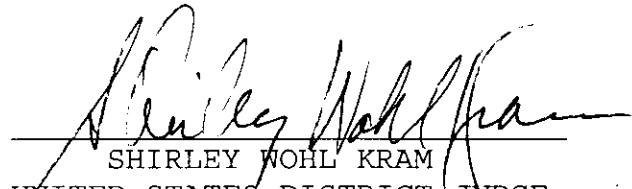
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<sup>1</sup> Indeed, on May 11, 2005, Defendant Capalbo moved for one such exhibit to be published to the jury prior to the Government doing so.

Pursuant to Federal Rule of Evidence ("F.R.E.") 402, Defendant DiPietro moves to preclude the introduction of photographs of DiPietro allegedly associating with members of organized crime. The application is denied. The Court has already ruled that evidence of Mr. DiPietro's ties to organized crime are relevant with respect to Counts 14-16 of the indictment. Nothing in the current submission provides a basis for the Court to alter that previous determination.

Finally, Defendant Capalbo's application to exclude Government Exhibit 541 pursuant to F.R.E. 403 is denied. The Court is satisfied that, with the appropriate limiting instruction, there is no issue with respect to F.R.E. 403.

SO ORDERED.

  
SHIRLEY WOHL KRAM  
UNITED STATES DISTRICT JUDGE

Dated: May 18, 2005  
New York, New York